

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,970

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a forty-one-year-old man who has a twelfth grade education. In the last fifteen years he has worked as a laboratory technician at a dairy farm, a service station attendant and a motor route agent for a newspaper company. All three jobs required a good deal of standing and walking and the occasional lifting of up to fifty pounds with the frequent lifting of up to twenty-five pounds.
2. The petitioner has not worked for more than a couple of months in the last two years due to neck and shoulder pain. Beginning in July of 1994, he sought medical treatment for spasms and stiffness in his right neck and shoulder and numbness and swelling and loss of sensation in his right hand. X-rays and an MRI performed at that time revealed a slight narrowing of his disc spaces at the C5-6 and C6-7 level, but no problem was clinically established which would explain his pain syndrome. He was treated with pain medications and a TENS unit with little long term success. He was given a working diagnosis of brachial neuritis.
3. In April of 1995, the petitioner found a good paying job as a solderer at an electronics company but was forced to leave that job after only a few days due to intense pain radiating down into his biceps. He was unable to grasp objects or do any fine motor work. In July of 1995, the petitioner was examined again with the thought that he might have a systemic inflammation, such as muscular dystrophy, but no viral problem could be established through the few laboratory tests he could afford to have performed. He developed additional new symptoms including parasthesias in his legs. Although his physicians were unable to establish a cause for his shoulder and neck pain, and weakness in his hands and legs, there is nothing in the medical evidence which indicates that the existence of his symptoms was doubted by any of his medical providers. Advil and Amitriptyline provided to him beginning in July of 1995, have not

led to any decrease in the pain. It has been suggested to him that he might have further tests to confirm some other cause but he does not have the money for such tests and confirmation of a muscular or neurological problem would probably result in the same treatment he is now receiving.

4. The petitioner's symptoms currently result in an inability to sleep, an inability to manipulate buttons and zippers on his clothing, and an inability to sit for more than fifteen or twenty minutes at a time. He has swelling and weakness in all his extremities all of the time. He is in a moderate amount of pain every day and physical exertion (even brushing his teeth) or vibrations cause his pain to flare to a severe point. He experiences fatigue which causes him to nap for close to an hour in the morning and an hour in the afternoon, in addition to nodding off at other times. He sometimes tries to repair clocks and VCRs, an old hobby of his, but he cannot hold a screwdriver for long. His wife, who works, takes care of the household chores and shopping for him. His ability to socialize has been severely curtailed by his problems.

ORDER

The decision of the Department is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner has pain and muscle weakness which has prevented him from engaging in his usual work activities for almost two years. He has shown that he cannot return to his former jobs, putting the burden on the Department to establish that there are other jobs which the petitioner could perform. See Fair Hearing Nos. 11,441, 13,457 and 13,686. The Department cannot meet its burden through use of the decisional rules of the Social Security Administration, because the petitioner has severe exertional (muscle weakness) and non-exertional (pain) impairments which would prevent him from doing even sedentary work. 20 C.F.R. § 404, Subpart P. Appendix 2, Rule 200.00. No other evidence was presented by the Department that the petitioner could engage in substantial gainful activity. Indeed, given the severity of the petitioner's pain and the limitations imposed by fatigue and muscular weakness, it is unlikely that such evidence could be produced.

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